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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,878	03/24/2004	Michael Martindale	MAR-2.001	6644
22874	7590	05/18/2006	EXAMINER	
GANZ LAW, P.C. P O BOX 2200 HILLSBORO, OR 97123			ROY, ANURADHA	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 05/18/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,878	<b>Applicant(s)</b> MARTINDALE, MICHAEL	
	<b>Examiner</b> Anuradha Roy	<b>Art Unit</b> 3736	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6,9,10 and 24-27 is/are pending in the application.  
     4a) Of the above claim(s) 1-5,7,8 and 11-23 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 6,9,10 and 24-27 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/11/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### **Restrictions**

Applicant's election of Group I in the reply filed on April 11, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Furthermore, Applicant believes the claims elected are generally within the scope of Group I. However, Examiner contends claims 11, 14, 19 & newly added claim 28 are in the scope of Group II, drawn to a *method* of assessing the amount of pronation, and claims 21-23 are in the scope of Group VI, drawn to a device for assessing a marker and processor. Accordingly, claims 11, 14, 19, 21-23 & 28 are withdrawn from consideration as being directed to a non-elected invention.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 9, 10, & 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Graf et al.

Regarding claim 24, Graf et al. discloses a foot assessment device comprising a marker (74) attachable to anatomy of a test subject allowing for observation of the

motion of the talus from a first position to a second position, and a template (76, 81, & 86) to align the foot in the first or second position, to determine an angular displacement of the foot.

In regards to claim 6, Graf et al. discloses a template further comprising: a first region adapted to represent a first amount of pronation of the foot in the second position; and a second region adapted to represent a second amount of pronation of the foot in the second position (Figure 4A & Column 9, lines 41-65).

Regarding claim 9, Graf et al. discloses a template wherein template includes an alignment guide (81 & 86) is adapted to align the foot in a subtalar-joint-neutral position.

With regard to claim 10, Graf et al. discloses a device for assessing pronation in the foot, the device comprising: an elongated marker (74 & 91) adapted for application to a talar-head region of the foot and adapted to aid visual inspection of the foot in a first or second position; a template (76, 81, & 86) adapted to align the foot in the first or second position.

In regards to claim 25, Graf et al. discloses a device wherein a light source (73) is used for observing the motion of the talus.

Regarding claim 26, Graf et al. discloses a foot assessment device comprising means for observing the motion of the talus from a static position (74 & 76) and means to determine from the observed motion the displacement of the talus relative to an axis of the foot (Figure 4A & Column 9, lines 42-65).

Regarding claim 27, Graf et al. discloses a device wherein a light source (73) is used as the means for observing the motion of the talus.


### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anuradha Roy whose telephone number is (571) 272-6169 and whose email address is anuradha.roy@uspto.gov. The examiner can normally be reached between 8:00am and 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

~AR~

  
**MAX F. HINDENBURG**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**